

IN THE COURT OF SH. SONU AGNIHOTRI
ADDL.SSESSIONS JUDGE-02: DWARKA COURTS: NEW DELHI

STATE VS. UMARDDIN @ BADRU AND ORS
FIR NO. 528/2018
PS: DABRI

18.09.2019

ORDER ON CHARGE

1. Vide this order, I shall dispose of controversy as to whether charge against accused persons are to be framed and if yes, for what offences or accused persons are to be discharged.
2. Arguments on charge have already been heard.
3. It was submitted by counsels for accused that accused have been falsely implicated in present case and that no charge for any offence is made out against accused persons. It was further submitted that accused have been implicated in present case just to solve present case. Counsel for accused Rifakat Khan submitted that as per prosecution version, accused was not present at the spot at the time of alleged incident nor any witness has identified him. It was submitted that at best accused can be charged u/s. 25 Arms Act on account of alleged recovery of fire arms from accused.

4. Ld. Additional PP for State on the other hand has submitted that charge for commission of offences U/sec 120-B/324/397/302 IPC and section 25/27 Arms Act is made out against accused persons in view of contents of charge-sheet. It is submitted that accused Laeek Ansari was correctly identified by son namely Sonu and daughter namely Lali of deceased in TIP proceedings and witnesses Chotte Lal, Sonu and Lali identified accused Umarddin and Shahbuddin in Dwarka Courts. It is submitted that as per statements of witnesses u/s. 161 Cr.PC, accused Umarddin fired upon deceased Rekha and co-accused Shahbuddin and Laeek Ansari carried weapons at the time of incident. It is submitted that one live cartridge 12 bore was found lying at the spot which as per report of FSL has matched with one of two desi kattas recovered at instance of accused Rifakat Khan from his house. It is further submitted that as per CDR of mobile phone of accused Rifakat Khan (registered in name of son of accused namely Kamran Khan), he has remained in constant touch with main accused Shahbuddin on the day of incident immediately before offence at 6:13 p.m and immediately after the offence i.e. at 8:49 p.m. It is submitted that recovery of weapons used in commission of offence at

instance of accused prima facie shows involvement of accused Rifakat Khan in conspiracy to commit murder of deceased Rekha.

5. It is well settled that at the stage of charge, court is not to weigh evidence in a critical manner and merely prima facie view is to be taken.
6. Perusal of record shows that accused Laeek Ansari has been correctly identified in TIP Proceedings by witnesses Sonu and Lali and accused Umarddin and Shahbuddin refused to undergo TIP Proceedings. Accused Umarddin and Shahbuddin were otherwise identified by witnesses Chhote Lal, Sonu and Lali in Dwarka Courts. Role of accused Umarddin as per witnesses is of firing at deceased whereas co-accused Shahbuddin and Laeek Ansari were carrying other weapons. Intention of accused Shahbuddin and Laeek Ansari is prima facie reflected from their act of carrying Arms, attacking persons present in house of deceased with knives, taking mobiles of persons present at house of deceased and bolting of family members of deceased and other persons present in one room. So far as accused Rifakat is concerned, dispute between him and deceased as per statement of witness Chhote Lal u/s. 161 Cr.PC was with regard to some money

not paid by accused (alongwith the charge-sheet, copies of documents pertaining to property transaction between accused Rifakat Khan and deceased Rekha have been filed by IO). One live cartridge 12 bore was recovered from the spot which has matched with one of the desi kattas allegedly recovered at instance of accused Rifakat Khan from his house. Mobile phone bearing No. 9289265370 being used by accused being in touch with mobile of co-accused Shahbuddin bearing No. 9607294924 immediately before commission of offence and after commission of offence, prima facie indicates that accused Rifakat Khan is involved in the conspiracy to commit murder of deceased and robbery at house of deceased. It is well settled that a person is liable not only for acts contemplated and done in pursuance of conspiracy but also for acts though not contemplated but done to achieve object of conspiracy. So accused Rifakat Khan is prima facie liable to be charged for commission of offences u/s. 120-B/324/397/302/342 IPC and Section 25 Arms Act (for recovery of kattas at his instance). Other accused are liable to be charged for commission of offences u/s. 120-B/324/397/302/342 IPC besides section 324/397/302/342 IPC. Accused Umarddin is also liable

to be charged for offences u/s. 25/27 Arms Act. No recovery of Arms has been effected from accused Shahbuddin and Laeek Ansari, so they are discharged for offence u/s. 25 Arms Act but on account of usage of Arms by them, they are liable to be charged for commission of offence u/s. 27 Arms Act. Order on charge is passed accordingly.

(Sonu Agnihotri)
ASJ-02 (South- West),
Dwarka Courts, Delhi
18.09.2019